

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Brian Whitaker

Plaintiff,

v.

Build-A-Bear Workshop, Inc., a
Delaware Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Build-A-Bear Workshop, Inc., a Delaware Corporation, and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Build-A-Bear Workshop, Inc. owned Build-A-Bear Workshop located at or about 1151 Galleria Blvd, Roseville, California, in March 2021.

3. Defendant Build-A-Bear Workshop, Inc. owns Build-A-Bear Workshop

1 (“Store”) located at or about 1151 Galleria Blvd, Roseville, California,
2 currently.

3 4. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein is
8 responsible in some capacity for the events herein alleged, or is a necessary
9 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
10 the true names, capacities, connections, and responsibilities of the Defendants
11 are ascertained.

12
13 **JURISDICTION & VENUE:**

14 5. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 6. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California’s Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24
25 **FACTUAL ALLEGATIONS:**

26 8. Plaintiff went to the Store in March 2021 with the intention to avail
27 himself of its goods and to assess the business for compliance with the
28 disability access laws. Not only did Plaintiff personally encounter the unlawful

1 barriers in March 2021, but he wanted to return and patronize the business
2 again but was specifically deterred due to his actual personal knowledge of the
3 barriers gleaned from his encounter with them.

4 9. The Store is a facility open to the public, a place of public
5 accommodation, and a business establishment.

6 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
7 to provide wheelchair accessible sales counters in conformance with the ADA
8 Standards as it relates to wheelchair users like the plaintiff.

9 11. The Store provides sales counters to its customers but fails to provide
10 any wheelchair accessible sales counters.

11 12. A couple of problems that plaintiff encountered is that the sales counters
12 were too high. While there were lowered portion of the counter, transactions
13 necessarily take place above the higher counter where the point-of-sale
14 machines for customer use were fixed and located. Additionally, the floor
15 space in front of the sales counters were obstructed with small steps.

16 13. Plaintiff believes that there are other features of the sales counters that
17 likely fail to comply with the ADA Standards and seeks to have fully compliant
18 sales counters for wheelchair users.

19 14. On information and belief, the defendants currently fail to provide
20 wheelchair accessible sales counters.

21 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
22 personally encountered these barriers.

23 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
24 wheelchair accessible facilities. By failing to provide accessible facilities, the
25 defendants denied the plaintiff full and equal access.

26 17. The failure to provide accessible facilities created difficulty and
27 discomfort for the Plaintiff.

28 18. The defendants have failed to maintain in working and useable

1 conditions those features required to provide ready access to persons with
2 disabilities.

3 19. The barriers identified above are easily removed without much
4 difficulty or expense. They are the types of barriers identified by the
5 Department of Justice as presumably readily achievable to remove and, in fact,
6 these barriers are readily achievable to remove. Moreover, there are numerous
7 alternative accommodations that could be made to provide a greater level of
8 access if complete removal were not achievable.

9 20. Plaintiff will return to the Store to avail himself of its goods and to
10 determine compliance with the disability access laws once it is represented to
11 him that the Store and its facilities are accessible. Plaintiff is currently deterred
12 from doing so because of his knowledge of the existing barriers and his
13 uncertainty about the existence of yet other barriers on the site. If the barriers
14 are not removed, the plaintiff will face unlawful and discriminatory barriers
15 again.

16 21. Given the obvious and blatant nature of the barriers and violations
17 alleged herein, the plaintiff alleges, on information and belief, that there are
18 other violations and barriers on the site that relate to his disability. Plaintiff will
19 amend the complaint, to provide proper notice regarding the scope of this
20 lawsuit, once he conducts a site inspection. However, please be on notice that
21 the plaintiff seeks to have all barriers related to his disability remedied. See
22 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
23 encounters one barrier at a site, he can sue to have all barriers that relate to his
24 disability removed regardless of whether he personally encountered them).

25
26 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
27 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
28 Defendants.) (42 U.S.C. section 12101, et seq.)

1 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
2 again herein, the allegations contained in all prior paragraphs of this
3 complaint.

4 23. Under the ADA, it is an act of discrimination to fail to ensure that the
5 privileges, advantages, accommodations, facilities, goods and services of any
6 place of public accommodation is offered on a full and equal basis by anyone
7 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
8 § 12182(a). Discrimination is defined, inter alia, as follows:

- 9 a. A failure to make reasonable modifications in policies, practices,
10 or procedures, when such modifications are necessary to afford
11 goods, services, facilities, privileges, advantages, or
12 accommodations to individuals with disabilities, unless the
13 accommodation would work a fundamental alteration of those
14 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 15 b. A failure to remove architectural barriers where such removal is
16 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
17 defined by reference to the ADA Standards.
- 18 c. A failure to make alterations in such a manner that, to the
19 maximum extent feasible, the altered portions of the facility are
20 readily accessible to and usable by individuals with disabilities,
21 including individuals who use wheelchairs or to ensure that, to the
22 maximum extent feasible, the path of travel to the altered area and
23 the bathrooms, telephones, and drinking fountains serving the
24 altered area, are readily accessible to and usable by individuals
25 with disabilities. 42 U.S.C. § 12183(a)(2).

26 24. When a business provides facilities such as sales or transaction counters,
27 it must provide accessible sales or transaction counters.

28 25. Here, accessible sales or transaction counters have not been provided in

1 conformance with the ADA Standards.

2 26. The Safe Harbor provisions of the 2010 Standards are not applicable
3 here because the conditions challenged in this lawsuit do not comply with the
4 1991 Standards.

5 27. A public accommodation must maintain in operable working condition
6 those features of its facilities and equipment that are required to be readily
7 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

8 28. Here, the failure to ensure that the accessible facilities were available
9 and ready to be used by the plaintiff is a violation of the law.

10
11 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
12 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
13 Code § 51-53.)

14 29. Plaintiff repleads and incorporates by reference, as if fully set forth
15 again herein, the allegations contained in all prior paragraphs of this
16 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
17 that persons with disabilities are entitled to full and equal accommodations,
18 advantages, facilities, privileges, or services in all business establishment of
19 every kind whatsoever within the jurisdiction of the State of California. Cal.
20 Civ. Code §51(b).

21 30. The Unruh Act provides that a violation of the ADA is a violation of the
22 Unruh Act. Cal. Civ. Code, § 51(f).

23 31. Defendants’ acts and omissions, as herein alleged, have violated the
24 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
25 rights to full and equal use of the accommodations, advantages, facilities,
26 privileges, or services offered.

27 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
28 discomfort or embarrassment for the plaintiff, the defendants are also each

1 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
2 (c).)

3
4 **PRAYER:**

5 Wherefore, Plaintiff prays that this Court award damages and provide
6 relief as follows:

7 1. For injunctive relief, compelling Defendants to comply with the
8 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
9 plaintiff is not invoking section 55 of the California Civil Code and is not
10 seeking injunctive relief under the Disabled Persons Act at all.

11 2. For equitable nominal damages for violation of the ADA. See
12 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021).

13 3. Damages under the Unruh Civil Rights Act, which provides for actual
14 damages and a statutory minimum of \$4,000 for each offense.

15 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
16 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

17 Dated: March 12, 2021

CENTER FOR DISABILITY ACCESS

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19
20 By: 

21 Amanda Seabock, Esq.
22 Attorney for plaintiff
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